arrangements."[212] Sprint asserts that "to the extent that cellular-LEC arrangements are subject to intercarrier contracts, the Commission must make a strong showing under the Sierra-Mobile doctrine to abrogate existing contracts."[213] Sprint counsels the Commission not to try to make that showing, which Sprint correctly predicts could not be made based on the record being established here.[214]

Thus, abrogation is inappropriate because 1) based on the existing record, the Commission lacks authority to require it, 2) the new Act puts an imprimatur on privately negotiated interconnection arrangements, and 3) several CMRS providers in the past stated that they were satisfied with the process that produced these contracts. The Commission should not upset existing arrangements in order to implement an ill-advised Bill and Keep scheme.

---

and Carriage, First Report and Order, 8 FCC Rcd 3359, 3414-15 (1993) (parties contended that application of new pricing discrimination statute to preexisting contracts constituted abrogation of contracts; Commission agreed that retroactive application of statute was inconsistent with Congressional intent); In re Applications of Bison City Television 49 Limited Partnership et al. for a Television Construction Permit, Memorandum Opinion and Order, 51 RR 2d 307, 310 (1982) ("[T]he Commission has no authority to compel parties to either enter into or abrogate settlement agreements which are by nature private contractual arrangements"); In re Applications of KQED, Inc., Memorandum Opinion and Order, 101 FCC 2d 723, 726 (1985) (reaffirming Bison City holding).

[212] Comments of CTIA, CC Docket 94-54 (September 12, 1994), at 20-21 (noting the advantages of negotiated arrangements, and stating that "[u]niform tariffing requirements necessarily restrict the ability of LECs and CMRS providers to adapt to changing market and technological conditions"); NPRM, para. 83 ("most LECs, AT&T, and established cellular carriers, as well as some SMR, paging, and PCS providers, support the existing requirement that LECs engage in good faith negotiations over interconnection with CMRS providers . . . [and] argue that contractual negotiation is superior to tariffed interconnection, because it permits the greater flexibility needed to respond rapidly to changing interconnection needs.")

[213] Sprint, pp. 2-3, citing FPC v. Sierra Pacific Power Co., 360 U.S. 348, 353-55 (1956); and United Gas Co. v. Mobile Gas Corp., 350 U.S. 332, 344 (1956).

[214] Sprint, p. 3.

2. JURISDICTIONAL ISSUES MUST BE RESOLVED CONSISTENTLY WITH THE TELECOMMUNICATIONS ACT AND THE SYSTEM OF DUAL REGULATION

We explained in our Comments that under the new Act the Commission cannot set the interconnection rates that we charge CMRS providers. While we anticipated the arguments that parties make in favor of such Commission regulation and preemption, we address a few of the comments here.[215]

The Telecommunications Act Sets Forth The Roles Of The States And The Commission

Some parties ignore the plain language of The New Act. For instance, in their joint comments, Sprint and APC state that in the new Act Congress "expressed a clear preference for bill and keep."[216] Actually, interconnection arrangements for all telecommunications carriers are to be based on Reciprocal Compensation, with Bill and Keep allowed only in arrangements where there are offsetting obligations and parties voluntarily "waive" their rights to mutual cost recovery.[217] Thus, no regulator, state or federal, can mandate Bill and Keep.

---

[215] See also ex parte letters dated February 26, 1996 and March 13, 1996 from Michael K. Kellogg, Counsel for Bell Atlantic and Pacific Telesis Group, to William F. Caton in CC Docket No. 95-185, concerning the effects of the new Act on the issues in this proceeding.

[216] Sprint and APC, p. 26, n.41. See also CTIA, p. 6.

[217] 47 U.S.C.§152(d).

Moreover, these CMRS providers' requests that the Commission dictate the terms of interconnection agreements, are contrary to the new Act. The new Act is replete with references to the active role the states are to take in overseeing interconnection agreements. While state commissions may mediate or arbitrate interconnection negotiations,[218] and must approve final interconnection agreements, the Commission may only get involved if the states fail to act.[219]

Notably, Section 252(e)(4) of the Act even suggests that a state's failure to approve or reject such an agreement does not constitute a failure to act, but rather results in the agreement being "deemed approved," and thus appealable directly to Federal District Court.[220] Consequently, the Commission can expect its reviewing role to be necessary only when a state blatantly rejects a request to arbitrate open interconnection issues under Section 252(b)(1), or passes access regulations that conflict with, and substantially impede implementation of Section 251.

The Commission May Not Preempt Rates Charged To CMRS Providers For Interconnection Simply Because Congress Has Given It Authority Over the Rates Charged By Such Providers To Their Subscribers

First, some parties suggest that if the Commission has exclusive jurisdiction over rates charged by CMRS providers then it must have exclusive jurisdiction over LEC interconnection rates charged to such providers.[221] The rationale is often stated in

---

[218] 47 U.S.C. §§252(a)(2), 252(b).
[219] 47 U.S.C. §252(e).
[220] 47 U.S.C. §252(e)(6).
[221] See, e.g., CTIA, p. 73; AT&T pp. 20-24.

vague terms: "The compensation rate mutually charged is one single transaction. . . ;"[222] "of necessity, this grant of plenary authority to the Commission over interconnection and CMRS rates carriers with it jurisdiction over the rates that LECs charge wireless providers for interconnection."[223]

The vagueness of these arguments is no surprise. Commenters cannot get around the limitations of Section 332's language which relates only to CMRS-initiated rates to end users. If a statute conferring exclusive federal jurisdiction over such rates also conferred jurisdiction over rates charged to CMRS providers by other entities, arguably the Commission would control rates of all entities with which CMRS providers do business. Surely no one contends that each contract into which CMRS providers enter -- regardless of the identity of and nature of services performed by the vendor -- is controlled by Section 332. Yet this is the logical extension of the arguments the commenters make.[224]

Second, some parties assert that intrastate and interstate components of CMRS-LEC calls are inseparable. AT&T argues that CMRS providers cannot keep track of calls that begin as intrastate calls and become interstate calls when the user crosses state lines.[225] As we explained in our opening comments, there are ways of dealing with this situation, either by technology that allows the CMRS provider or the LEC to determine the locations of the origination and termination of calls, together with

---

[222] CTIA, p. 73.

[223] AT&T, p. 22.

[224] See, e.g., CTIA, p. 74. On the other hand, CTIA appears to recognize that Section 332 preemption relates to end user rates. See CTIA, pp. 34 & 60.

[225] See, e.g., AT&T, pp. 25-26.

the use of PIUs, or reliance on a surrogate, such as the Entry-Exit Surrogate.[226] AT&T's own comments appear to support the technological solution. AT&T states that in the normal course of wireless communication "wireless subscribers must be constantly monitored for call delivery and handoff as the subscriber moves throughout the CMRS network."[227] In addition, Sprint does not say that the traffic is inseparable, but merely that it is "difficult" to determine the jurisdictional nature of many calls.[228] The Commission cannot preempt based on such vague allegations.

---

[226] See Comments By Pacific Bell, Pacific Bell Mobile Services, and Nevada Bell, pp. 3 & n.9, 101-102.

[227] AT&T, pp. 10-11.

[228] Sprint, p. 14.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC

The reactions to the Commission's proposals regarding calls involving IXCs were predictable. The IXCs believe they should not have to pay CMRS providers access charges.[229] CMRS providers favor such charges.[230] We, of course, have no objection to CMRS providers recovering access charges from IXCs for the portions of access service that they provide for IXCs.

However, some parties suggest that where IXC traffic comes to the CMRS network through the LEC, both the LEC and CMRS operator should share ratably the IXC access charge.[231] We disagree vehemently. CMRS providers are not entitled to recover access charges from us. We do not receive compensation from the IXC for portions of access provided by CMRS providers. Thus, CMRS providers must obtain compensation directly from IXCs.[232] Moreover, we receive no compensation from either the CMRS provider or the calling party when we pass traffic involving an IXC to or from CMRS providers. It does not comport with the new Act's requirement of Mutual Compensation for us to compensate CMRS providers when they do not compensate us.

---

[229] AT&T, pp. 4, 31; WorldCom, pp. 3-4, 19-21.
[230] See, e.g., Western Wireless, pp. 4, 22.
[231] Omnipoint, p.17; APC, p. iii.
[232] Or, an arrangement might be negotiated under which the IXC paid the LEC the full amount for both the LEC's and the CMRS providers functions, and the LEC paid the CMRS provider via a billing and collection agreement.

IV. APPLICATION OF THE NPRM'S PROPOSAL

CMRS providers vary in their opinions concerning the types of CMRS providers to which the NPRM's Bill and Keep Proposal should apply. CTIA says it should apply to all.[233] PCIA says it should apply to all except paging.[234] Sprint says it should be confined to PCS providers.[235] The reasons that PCIA and Sprint want to confine the proceeding largely relate to the differences in traffic flow and, thus, the harm that Bill and Keep would cause different providers.[236] We agree, of course, that traffic flow is a vital consideration.

The Commission cannot create any Bill and Keep policy applicable to the LECs that will not be frustrated by the fact that LECs terminate over four times more traffic for CMRS providers than they terminate for LECs. The Commission should abandon the Bill and Keep proposal as legally and economically unsound and allow us to go forward with our plans to begin in April negotiating with two-way CMRS providers for Mutual Compensation, followed later by negotiations with paging providers.

---

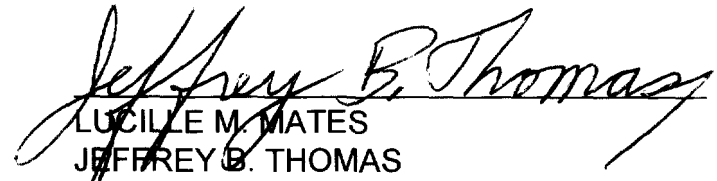
[233] CTIA, p. 85.
[234] PCIA, p. 11.
[235] Sprint, pp. ii, 2-4.
[236] Sprint also is rightly concerned that the Commission would have difficulty requiring the LECs to abrogate their contracts with cellular providers.

V. CONCLUSION

For all the above reasons, the Commission should not require Bill and Keep or any other "interim" measure for LEC-to-CMRS interconnection. The Commission should allow us to continue forward with our plans to negotiate Mutual Compensation arrangements that will support the Commission's pending access reform, the legitimate interests of all parties and, most importantly, the interests of the public.

Respectfully submitted,

PACIFIC BELL
PACIFIC BELL MOBILE SERVICES
NEVADA BELL



LUCILLE M. MATES
JEFFREY B. THOMAS
SARAH RUBENSTEIN

140 New Montgomery Street, Rm. 1529
San Francisco, California 94105
(415) 542-7661

MARGARET E. GARBER

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Their Attorneys

Date: March 25, 1996

0131822.01